

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 DAWUD HALISI MALIK, f/k/a DAVID  
11 RIGGINS,

12 Plaintiff,

13 v.

14 HAROLD CLARKE, *et al*,

15 Defendants.

Case No. C07-5160 RJB/KLS

ORDER DENYING SECOND  
MOTION FOR APPOINTMENT OF  
COUNSEL

16 Before the Court is Plaintiff's second motion for appointment of counsel, with memorandum  
17 of law in support and affidavit. (Dkt. # 62, Attach. 1-2). Having reviewed the motion, Defendants'  
18 opposition (Dkt. # 64), and balance of the record, the Court finds, for the reasons stated below, that  
19 the motion should be denied.

20 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.  
21 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding  
22 *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*,  
23 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984);  
24 *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires  
25 an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to  
26 articulate his claims *pro se* in light of the complexity of the legal issues involved. *Wilborn*, 789  
27 F.2d at 1331.

1 Plaintiff claims that he is unable to afford counsel, that the issues in this case are complex,  
2 that he has limited knowledge of the law, that he is unable to conduct the required investigation  
3 because of his imprisonment, that a lawyer is required to conduct cross-examination, and that he is  
4 unable to complete all that is required to proceed for trial. (Dkt. # 62). However, the reasons  
5 relied on by Plaintiff are not particular to him, but apply to most *pro se* prisoners. In addition, the  
6 issues that remain in the case are now limited to whether DOC Policy 400.280 serves a legitimate  
7 penological interest relating to mail, whether Defendant Van Boening was personally involved in  
8 violating free speech and whether declaratory or injunctive relief is appropriate. *See* Dkt. # 56.

9 In addition, Plaintiff has demonstrated an adequate ability to articulate his claims *pro se* in  
10 light of the complexity of the issues involved. Plaintiff has successfully litigated his case for the  
11 past year. Plaintiff's previous request for counsel was denied. (Dkt. # 33). Plaintiff has presented  
12 no changed factual or legal circumstances to warrant the appointment of counsel.

13 Accordingly, the Court finds that counsel is not necessary and Plaintiff's motion to appoint  
14 counsel (Dkt. # 62) is **DENIED**. The Clerk is directed to send copies of this Order to Plaintiff.

15  
16 DATED this 25th day of July, 2008.

17  
18  
19  
20 

21 Karen L. Strombom  
22 United States Magistrate Judge  
23  
24  
25  
26  
27